U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18459599

Date: SEP. 23, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an ecology thought leader and activist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements of this classification through either evidence of a one-time achievement (a major, internationally recognized award) or meeting three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is the founder of a non-profit organization in his native [redacted] through which he promotes his theories relating to climate change. The record shows that these theories relate to the [redacted] and that he also uses his foundation to promote his claims to have predicted the occurrence of [redacted] solved "the mystery of the [redacted]" and decoded hidden messages in [redacted] Although he initially made vague references to wildfires in the Western United States, in responding to the Director's request for evidence (RFE) the Petitioner stated that he intends to establish his non-profit organization in the United States to "work[ing] on environmental education and ecological awareness, primarily with Hispanic communities, to stop climate change."

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner did not meet any of these evidentiary criteria. On appeal, the Petitioner asserts that he meets the evidentiary criteria relating to published material about him and his work in professional or major trade publications or other major media, his original contributions of major significance to his field, and his leading role for organizations having a distinguished reputation. After reviewing all of the evidence in the record, we find that he does not meet the requisite three evidentiary criteria.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

In order to meet the requirements of this criterion, material must be published in a professional or major trade publication or other major media, and must be about a petitioner and relate to their work in their field of expertise. In addition, the evidence must include the title, date, and author of the

material, and evidence in a foreign language must comply with the requirements of 8 C.F.R. § 103.2(b)(3) relating to full English language translations.

As noted by the Director in his decision, the Petitioner submitted several articles which were published in a variety of mainly Argentine publications, many of which appeared to be about him and his work with the [redacted] However, in many cases the English translations which accompanied these articles clearly did not include a translation of the entire original foreign-language material, and in all cases the translator's attestation did not verify that the translations were complete and were therefore not compliant with 8 C.F.R. § 103.2(b)(3). As such, he concluded that this material could not be considered in the analysis of this criterion. Other deficiencies in this evidence were also identified by the Director in both his RFE and his decision to deny, including missing information about the name of the publication, the date of publication and the author, which in many cases was represented by hand-written notes which could not be verified. In addition, the Director concluded that the information regarding these publications was not sufficient to show that they were one of the qualifying types of media under this criterion.

On appeal, the Petitioner initially focuses on articles which appeared in the newspapers *El Liberal* and *La Prensa*, and submits new versions of some previously submitted articles together with new English translations. We note that other articles were also resubmitted with compliant English translations and translator certificates in response to the Director's RFE. An article in *La Prensa* published on [redacted] 2015 is about the 2016 [redacted] conference which was organized by the Petitioner and held in [redacted], Uruguay and includes information about and comments from the Petitioner. He also submits a new letter from *El Liberal* which identifies the author of three previously submitted articles published in 2012 and 2013. Each of these three articles are about the Petitioner and his work as a climate change activist, and each is accompanied by a complete English translation and translator certification.

Regarding the issue of whether these newspapers are professional or major publications or other major media, the Petitioner asserts on appeal that the Director ignored evidence regarding the status and circulation of these two newspapers.[1] This evidence includes a translated excerpt from *El Boletin Express*, which the evidence indicates is published by an Argentinean organization called "IVC", listing circulation data for several Argentinean publications as of September 2012.[2] In addition, an article from pressreference.com printed on March 12, 2020 provides information on the press market in Argentina as well as circulation figures for some publications. The IVC publication lists the circulation of *El Liberal* as approximately 25,000 on Sundays and 24,000 during the week, which is a fraction of the circulation listed for other publications such as *Clarin* (600,000 and 270,000) and *La Nacion* (356,000 and 176,000). In addition, the article from pressreference.com does not list this newspaper under the heading "Top Ten Daily Newspapers" or in its list of "the 10 largest national newspapers."

[1] See 6 USCIS Policy Manual F.2(B)(2), https://www.uscis.gov/policymanual (stating that evidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show who the intended audience of the publication is, as well as the title, date and author of the material.)

[2] The organization's website, www.ivc.org.ar, indicates that it is the Circulation Verification Institute and is "the most important organization in the advertising market in our country. The media are associated with the IVC so that a professional organization supports their circulation figures…"

Turning to *La Prensa*, while the above evidence does list that newspaper as one of the ten largest in Argentina, the Petitioner indicated in his initial submission that this article appeared in a Uruguayan publication of the same name, and has not submitted information regarding its circulation. Although figures regarding website visitation were submitted, the Petitioner does not explain how these show www.seminariolaprensa.com to be a major medium, and we note that the figures are far below those shown in reports about other websites in the record. Therefore, as the Petitioner has not claimed that either newspaper qualifies as a professional or major trade publication, and the evidence does not establish that they qualify as major media, none of these materials qualify under this criterion.

Other materials submitted with proper translations and translator certifications, both in response to the Director's RFE and on appeal, do not qualify under this criterion for a variety of reasons. Articles in *Critica De La Argentina*, *La Columna* and *Uno* are about the Petitioner and his work, but the record does not include information about them which includes circulation figures, and thus does not establish that they are major media.

The Petitioner also refers to evidence relating to a radio program hosted by the Petitioner in particular two reference letters. The first was from the General Manager of a radio station in who indicates that the station has transmitted the Petitioner's program since 2011. While the letter describes the program as "one of the most listened by the audience," no information to support this statement is provided. Another letter regarding this program was written by who states that he is the program's artistic producer. He describes it as focusing on "environmental, new technologies, ecology, healthy leaving [*sic*] and the best music of all times," and claims that it is broadcast "in 225 radios [*sic*] in 16 countries around the world." He also provides a list of radio stations which air the program, but the record includes confirmation and information about very few of the listed stations. In addition to the letter from an undated article in *Seminario La Prensa*, which is also not accompanied by a proper translator's certification, lists only 12 radio stations which broadcast the Petitioner's program. No further evidence is provided regarding these stations, and the Petitioner has therefore not established that is or was published or broadcast on a major medium. In addition, we note that while the record shows that the Petitioner is the executive producer and host of this program, and that it focuses on the regarding climate change, it has not been established that the program is about the Petitioner.

The second letter highlighted by the Petitioner on appeal came from Chief of Content for in Argentina. He states in a letter dated June 1, 2015 that in Argentina has been broadcasting since 2010, describing this weekly program as a "micro." No further information is provided in this letter or elsewhere in the record about or As with the Petitioner's radio program, the evidence does not demonstrate that this "micro" is or was broadcast on a major medium, or that it was about him and his work.

The Petitioner also included what appears to be a screenshot from the YouTube channel of showing him being interviewed regarding a race in However, as with the other materials initially submitted, this evidence is accompanied by an incomplete transcript of the interview in English, as well as an improper translator's certification. In addition, even if we were to consider the content of this transcript as being about the Petitioner and his work, he has not

established that [redacted] is a major medium in Argentina. The record includes a partially translated media kit that appears to combine viewership statistics across multiple platforms and social media, but does not include a basis by which to determine that these statistics show that [redacted] is a major medium.

After review of the totality of the evidence submitted in support of this criterion, we conclude that the Petitioner has not established that he meets the criterion.

B. Additional Criteria

As we noted above, the Petitioner also asserts on appeal that he meets two additional criteria. However, since we have concluded that he does not meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii), he cannot meet the requisite three evidentiary criteria to establish that he satisfies the initial evidentiary requirement for this classification, and we therefore reserve these issues.[3]

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).